

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FAIRLY W. EARLS,

Petitioner,

Case No. 20-cv-635-pp

v.

LARRY FUCHS,

Respondent.

ORDER DENYING MOTION TO TRANSMIT RECORDS (DKT. NO. 13)

On April 27, 2021, the court dismissed the petitioner’s *coram nobis* petition as an unauthorized second or successive §2254 petition, denied as moot the petitioner’s motion for a prompt hearing, declined to issue a certificate of appealability and dismissed the case with prejudice. Dkt. No. 9 at 9-10. A week later, the petitioner filed a notice of appeal. Dkt. No. 11. With his notice of appeal, the petitioner filed a “Transcript Information Sheet.” Dkt. No. 13. Under “Fed.R.A. Procedure 10(2) and Fed.R.A. Procedure 11(e),” the petitioner asks this court to send to the Seventh Circuit Court of Appeals “designated parts of the following Record,” including “all pretrial and trial records held by the State Courts that flow from the State Illegal Sentence” and “all Appeal Records and Exhibits held by the District Court including the Controlling Case of *Boyd v. Boughton*, 798 F.3d 490 (7th Cir. 2015).” Id.

The Seventh Circuit generally defines the record on appeal “by limiting the facts [it] review[s] to those considered by the district court.” United States v.

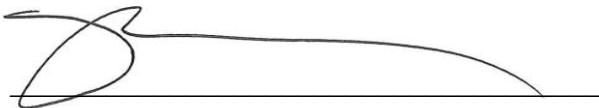
Howell, 958 F.3d 589 (7th Cir. 2020). This court did not have before it “all pretrial and trial records held by the state courts” when it decided that the petition constituted an unauthorized second or successive *habeas* petition, so those documents are not part of the record. As for the petitioner’s request that the court forward the decision in Boyd v. Boughton to the Seventh Circuit, that request is unnecessary. Even if the Seventh Circuit concludes that Boyd v. Boughton is relevant to its consideration of the petitioner’s appeal,¹ the Seventh Circuit does not need this court to transmit one of its own decisions. It can access those decisions itself.

Because there is no reason for this court to transmit to the Seventh Circuit evidence that this court did not have before it and did not consider and because the Seventh Circuit already has access to the decision in Boyd v. Boughton, the court will deny the petitioner’s motion.

The court **DENIES** the petitioner’s motion to transmit records. Dkt. No. 13.

Dated in Milwaukee, Wisconsin this 13th day of July, 2021.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge

¹ The court did not cite Boyd v. Boughton in its order of dismissal, because the court never reached the merits of the petitioner’s claim, concluding that it did not have jurisdiction to do so.